

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

DAIREN PATRICK PITTMAN, #1200439,

Petitioner,

v.

ACTION NO. 2:17cv232

HAROLD CLARKE,
Director of VA Dept. of Corrections,

Respondent.

FINAL ORDER

Petitioner Dairen Patrick Pittman, a Virginia inmate, has filed a *pro se* petition, pursuant to 28 U.S.C. § 2254. ECF No. 1. Pittman alleges violations of federal rights pertaining to his convictions on August 11, 2011, in the Circuit Court for Isle of Wight County for robbery, grand larceny, use of a firearm in the commission of a felony, possession of a firearm by a convicted felon, and wearing a mask in public. As a result of these convictions, on February 12, 2014, the circuit court sentenced Pittman to forty-eight (48) years in prison with thirty-one (31) years suspended.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation.

The Report and Recommendation, filed February 1, 2018, recommends that Respondent's Motion to Dismiss be GRANTED, and the Petition for a writ of habeas corpus be DENIED and DISMISSED with prejudice. ECF No. 14.

Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On February 16, 2018, the Court received Pittman's objections to the Report and Recommendation. ECF No. 15. Pittman objected to the Report and Recommendation's finding that equitable tolling did not apply, arguing (1) he was not aware of the limitation period and, if he was aware, could not have calculated it due to his low intelligence; (2) he is mentally disabled and the psychologists at Central State Hospital who determined he was competent to stand trial erred; and (3) his attorney, Adam M. Carroll, made misrepresentations to the Court in his affidavit.


The Court, having reviewed the record and examined the objections filed by Pittman to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation. It is, therefore, ORDERED that Respondent's Motion to Dismiss, ECF No. 9, is GRANTED, and the Petition for a writ of habeas corpus,

ECF No. 1, is DENIED and DISMISSED WITH PREJUDICE. It is further ORDERED that judgment be entered in favor of Respondent.

Pittman has failed to demonstrate "a substantial showing of the denial of a constitutional right," and therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

Pittman is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to Pittman and counsel of record for Respondent.

_____/s/_____
Rebecca Beach Smith
Chief Judge


Rebecca Beach Smith
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
March 19, 2018